

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)**

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**BP PRODUCTS**

**NORTH AMERICA INC.,**

**Plaintiff,**

**v.**

**CHARLES V. STANLEY, JR.,**

**Et al.**

**Defendants.**

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**Case No. 1:09cv1147 (LMB / TRJ)**

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF CONSENT MOTION TO AMEND JUDGMENT**

The Defendants, by counsel, state as follows in support of their Consent Motion to Amend Judgment:

**Background**

On July 15, 2010, the Court entered its memorandum opinion and order granting the Defendants summary judgment against the Plaintiff. In that July 15, 2010 Order, the Court stated that, “[b]ecause the defendants have requested costs and attorney's fees, judgment will not be entered until the Court has resolved that issue.” [Doc. # 58.] Following briefing on the Defendants' Motion for Attorneys Fees, the Court granted that motion in part and denied it in part, and entered its ruling partially in favor of the Defendants and directed the Clerk to enter final judgment in the Defendants' favor. [Doc. # 70.] On September 1, 2010, the Clerk entered

judgment in this case. [Doc. # 71 (“Judgment”).] A copy of the Judgment is attached hereto as Exhibit A.

### **Amendment of Judgment**

In their Answer and Counterclaim, and Motion for Summary Judgment in this matter, the Defendants asked that the Deed Restriction contained in the Special Warranty Deed be declared invalid and unenforceable, and that a copy of an order to that effect be recorded in the land records of Fairfax County, Virginia indexed under the names of the parties to this case. The Court's Memorandum Opinion and Order granted the relief sought by the Defendants in that it declared the offending provision of the Special Warranty Deed invalid and unenforceable. The Judgment entered by the clerk however, recites only that judgment is entered in favor of the Defendants. As such, the Judgment is not in a form that, if recorded in the land records of the County of Fairfax, Virginia, would give notice to the world as to the invalidity of the Deed Restriction contained in the Special Warranty Deed.

The relief sought by the Defendants herein, and consented to by the Plaintiff, subject to and without waiving its rights to appeal therefrom, is that the judgment entered in this case should specifically state that the Deed Restriction contained in the Special Warranty Deed is invalid and unenforceable, and should identify the Special Warranty Deed with particularity. Attached hereto as Exhibit B is a copy of the proposed Final Judgment and Order which Defendants seek and which Plaintiff has consented to, subject to and without waiving Plaintiff's right to contest the merits of the Proposed Final Judgment and Order, related orders and other adverse rulings in this case on appeal. Specifically, Plaintiff's consent is for the sole and limited purpose of allowing Defendant to record a more specific final judgment with the recorder of deeds only in the event such final judgment is affirmed on appeal. Plaintiff's consent is further

conditioned on the Court's granting a stay of enforcement of the Final Judgment and Order, including a prohibition against recording the Final Judgment and Order in the land records of Fairfax County or any other county and against executing on the attorney's fees and costs award pending disposition of this case on appeal, without requiring Plaintiff to post a *supersedeas* bond, as requested in the Plaintiff's motion to stay execution of judgment.<sup>1</sup>

Amendment of a judgment order is appropriate where the original judgment fails to provide that relief which the Court found a party entitled to receive. *Continental Cas. Co. v. Howard*, 775 F.2d 876 (7th Cir. 1985). In this case, the Court clearly found that the Defendants were entitled to an invalidation of the offending Deed Restriction. That finding should be reflected in a final judgment which may be recorded in the land records so as to give notice to any subsequent purchasers of the status of the Deed Restriction on the Property.

### **CONCLUSION**

For the reasons set forth herein, the Defendants respectfully request that the Court enter the Final Judgment and Order attached hereto as Exhibit B.

Dated: September 23, 2010

CHARLES V. STANLEY, JR.  
TELEGRAPH PETROLEUM PROPERTIES, LLC  
By Counsel

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<sup>1</sup> The Plaintiff will file a separate Motion, which the Defendants will consent to, requesting this relief.

By:                     /s/                    

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23d day of September, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel named below, and that on the same date I also e-mailed a copy of the foregoing to counsel named below:

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